



**JUDICIAL REVIEW - ORDER 53, RULES OF
COURTS 2012 - PARAGRAPH 11 SCHEDULE 2,
REAL PROPERTY GAINS TAX ACT 1976**

SPEED MODULATION SDN BHD

v.

**KETUA PENGARAH HASIL DALAM NEGERI
[WA-25-289-08/2021]**

 **KUALA LUMPUR HIGH COURT**

 **YA DATO' AMARJEET SINGH A/L SERJIT**

 **4 NOVEMBER 2024**

The Taxpayer was incorporated on 2.8.2007 and its principal activity was property investment. The crux of the judicial review application revolved around the question of facts where it was not satisfied with the assessment raised for the Year of Assessment (“YA”) 2021 vide the Notice of Assessment dated

Assessment and Notice of Additional Assessment dated 23.7.2021 under the Real Property Gains Tax Act 1976 (“RPGT Assessments”).

The Taxpayer contested that the market value assessed by Jabatan Penilaian dan Perkhidmatan Harta (“JPPH”) was incorrect as the Taxpayer contended that the market value assessed by their private valuer, Jones Lang Wootton (“Private Valuer”) through a valuation report dated 30.6.2020 was correct for properties HM/817 PN 81550, HM/46266 PN 89597, HM/818 PN 81551 and HM/46267 PN 89598 (“Subject Properties”).

The main issue was whether the RPGT Assessments ought to be raised and heard before the Special Commissioners of Income Tax (“SCIT”) as provided under Section 18 of the Real Property Gains Tax Act 1976 (“RPGTA”) and not by the High Court by way of application of judicial review. The Taxpayer submitted that the Revenue’s decision was wrong and ought at the time to be quashed since the Revenue failed to furnish a copy of the JPPH valuation to the Taxpayer when the decision was made. The Taxpayer argued that the Revenue, as a public authority, has a duty to give reasons to substantiate its decision. The JPPH’s valuation report has been given subsequently (particularly after this application has been filed) may be construed as an afterthought and cannot be taken into account. The Revenue has also failed to specify the provision upon which it was relying when substituting the market value of the Subject Properties adopted by the Taxpayer with its own.

The Revenue submitted that where the alternative/statutory remedy of appeal was available, judicial review application may only be allowed in very exceptional circumstances where any appeal against an assessment must be determined by the SCIT in accordance with Section 18 of the RPGTA. Section 15 of the RPGTA regulates on the assessment/additional assessment. The Revenue had not breached any principle of natural justice as there was no statutory provisions that obligated the Revenue to inform the Taxpayer to give reasons and explanation. Further, there was no statutory provision that required the Revenue to provide a copy of the JPPH valuation report to the Taxpayer. There was also no statutory provision that required the Revenue to make the Taxpayer privy to the communication between the Revenue and JPPH. The onus lied on the Taxpayer to first establish what were the statutory duties under the RPGTA that were allegedly imposed on and breached by the Revenue. In this case, the Taxpayer failed to prove any of its allegation on the imposition of statutory duties on the Revenue.

In delivering the judgment, after hearing both written and oral submission by both parties, the High Court allowed the Taxpayer’s judicial review application with costs of RM3,000.00.

Editorial Notes: The Revenue has the right to appeal to the Court of Appeal within 30 days from the date of this decision.